

REMARKS

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested. Pursuant to 37 CFR § 1.121, attached as appendix is a version with markings to show changes made to the amended claims.

Initially, applicants would like to thank Examiner Bugaisky for the courtesy extended to applicants' undersigned representative during the telephone interview conducted on April 3, 2003. The substance of the telephone interview is addressed below.

The new matter objection under 35 U.S.C. § 132 to applicants' prior Amendment, dated November 30, 2001, is respectfully traversed in view of the amendments to claim 17.

Pursuant to the request for full citations of references 14, 64, and 68 disclosed in the information disclosure statement and PTO-1449 form filed June 19, 2000, applicants provide the full citations for these references below:

Reference No. 14: Collmer et al., "*Erwinia chrysanthemi* and *Pseudomonas syringae*: Plant Pathogens Trafficking in Extracellular Virulence Proteins," in Dangl, ed., Bacterial Pathogenesis of Plants and Animals: Molecular and Cellular Mechanisms (Current Topics in Microbiology and Immunology, Vol. 192, Berlin: Springer, pp. 43-78 (1994);

Reference No. 64: Young et al., "PGPR: Is There a Relationship Between Plant Growth Regulators and the Stimulation of Plant Growth or Biological Activity?," in Keel et al., eds., The Second International Workshop on Plant Growth-Promoting Rhizobacteria, IOBC / WPRS Bulletin, Interlaken, Switzerland, October 14-19, 1990, pp. 182-186 (1991); and

Reference No. 68: Dean et al., "Immunisation Against Disease: The Plant Fights Back," in Pegg et al., eds., Fungal Infection of Plants: Symposium of the British Mycological Society, British Mycological Society Symposium 13, Cambridge: Cambridge University Press, pp. 383-411 (1987).

The rejection of claims 17, 19, 38, and 39 under 35 U.S.C. § 112 (first paragraph) for lack of enablement is respectfully traversed in view of the above amendments and the following remarks.

In the outstanding office action, the U.S. Patent and Trademark Office ("PTO") indicated that the present application fully enables "a nucleic acid whose full complement hybridizes" under the recited conditions to the nucleic acid of SEQ ID No: 1 or SEQ ID No: 3. While applicants appreciate the remarks in this regard, applicants would like to point out that the limitation "full complement hybridizes" should not be interpreted to require 100 percent hybridization (or identity) between the complement and either SEQ ID No: 1 or SEQ ID No: 3. Such an interpretation of this limitation would necessarily render the recitation of the alternative member of the Markush group (i.e., covering the hybridization conditions) entirely redundant over a protein or polypeptide encoded by the nucleic acid of SEQ ID No: 1 or SEQ ID No: 3.

In any event, the above amendment clearly avoids the problem identified by the PTO in the outstanding office action: obtaining proteins whose nucleic acids only contain "a small portion (e.g., 15 contiguous nucleic acids)" that hybridize to SEQ ID No: 1 or SEQ ID No: 3 under the recited conditions.

For these reasons, applicants respectfully submit that the above amendments place claims 17, 19, 38, and 39 in condition for allowance. Therefore, the rejection of claims 17, 19, 38, and 39 under 35 U.S.C. § 112 (first paragraph) should be withdrawn.

The rejection of claims 17, 19, 38, and 39 under 35 U.S.C. § 112 (second paragraph) for indefiniteness is respectfully traversed in view of the amendments.

The objection to claim 18 for depending from a rejected base claim is respectfully traversed in view of the above amendments to claims 17.


The PTO is reminded of applicants' remarks from its prior Amendment, dated November 30, 2001, regarding the rejoining of the claims of non-elected Groups II and III (i.e., claims 20-28) to those of elected Group I (i.e., claims 17-19 and 38-39). As noted at page 2 of the office action mailed June 5, 2001, the PTO has indicated that claims 20-28 would be rejoined with claims 17-19 and 38-39 "at such time that the recited method claims read only upon allowed subject matter...." Because the presently claimed subject matter of claims 17-19 and 38-39 is allowable for the reasons noted above and claims 20-28 ultimately depend from claim 17, applicants respectfully request that the restriction requirement between Group I and Groups II and III be withdrawn in its entirety. The amendments to

claims 20-28 presented herein have been made to avoid any need for an Examiner's amendment to obviate potential indefiniteness rejections.

In view of all of the foregoing, applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Date: April 4, 2003


Edwin V. Merkel
Registration No. 40,087

NIXON PEABODY LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051
Telephone: (585) 263-1128
Facsimile: (585) 263-1600

Appendix
Version With Markings to Show Changes Made
Page 1 of 2

In reference to the amendments made herein to the claims, additions appear as underlined text, while deletions appear as strikeout text, as indicated below:

In The Claims:

17. (Twice Amended) An isolated hypersensitive response eliciting protein or polypeptide selected from the group consisting of a protein or polypeptide having an amino acid sequence comprising ~~SEQ ID Nos.~~ SEQ ID NO: 2 or SEQ ID NO: 4, and a protein or polypeptide having an amino acid sequence encoded by a nucleic acid whose full length complement hybridizes, at 65°C in a medium which includes ~~about~~ 1M NaCl, to a DNA molecule comprising ~~a the~~ nucleotide sequence of ~~SEQ ID Nos.~~ SEQ ID NO: 1 or SEQ ID NO: 3.

18. (Amended) An isolated protein or polypeptide according to claim 17, wherein the protein or polypeptide has an amino acid sequence comprising ~~SEQ ID Nos.~~ SEQ ID NO: 2 or SEQ ID NO: 4.

19. (Amended) An isolated protein or polypeptide according to claim 17, wherein the protein or polypeptide is encoded by a nucleic acid ~~which~~ whose full length complement hybridizes, at 65°C in a medium which includes 1 M NaCl, to a DNA molecule comprising ~~a the~~ nucleotide sequence of ~~SEQ ID Nos.~~ SEQ ID NO: 1 or SEQ ID NO: 3.

20. (Amended) A method of imparting disease resistance to ~~a plant~~ plants comprising:

applying a protein or polypeptide according claim 17 in a non-infectious form to a plant or plant seed under conditions effective to impart disease resistance to the plant or a plant grown from the plant seed.

21. (Amended) A method according to claim 20, wherein ~~plants are treated during said applying~~ said applying is carried out on a plant.

22. (Amended) A method according to claim 20, wherein ~~plant seeds are treated during said applying~~ said applying is carried out on a plant seed, said method further comprising:

Appendix
Version With Markings to Show Changes Made
Page 2 of 2

planting the seed ~~seeds~~ treated with the hypersensitive response elicitor
in natural or artificial soil and

propagating a plant ~~plants~~ from the seed ~~seeds~~ planted in the soil.

23. (Amended) A method of enhancing plant growth comprising:
applying a protein or polypeptide according claim 17 in a non-
infectious form to a plant or plant seed under conditions effective to enhance plant growth of
the plant or a plant grown from the plant seed.

24. (Amended) A method according to claim 23, wherein ~~plants are~~
~~treated during said applying~~ said applying is carried out on a plant.

25. (Amended) A method according to claim 23, wherein ~~plant seeds are~~
~~treated during said applying~~ said applying is carried out on a plant seed, said method further
comprising:

planting the seed ~~seeds~~ treated with the hypersensitive response elicitor
in natural or artificial soil and

propagating a plant ~~plants~~ from the seed ~~seeds~~ planted in the soil.

26. (Amended) A method of insect control for plants comprising:
applying a protein or polypeptide according claim 17 in a non-
infectious form to a plant or plant seed under conditions effective to control insects on the
plant or a plant grown from the plant seed.

27. (Amended) A method according to claim 26, wherein ~~plants are~~
~~treated during said applying~~ said applying is carried out on a plant.

28. (Amended) A method according to claim 26, wherein ~~plant seeds are~~
~~treated during said applying~~ said applying is carried out on a plant seed, said method further
comprising:

planting the seed ~~seeds~~ treated with the hypersensitive response elicitor
in natural or artificial soil and

propagating a plant ~~plants~~ from the seed ~~seeds~~ planted in the soil.